

**MINUTES**  
**Montana Fish, Wildlife & Parks Commission Meeting**  
**Red Lion Hotel – 20 North Main - Kalispell, MT**  
**JULY 17, 2008**

**Commission Members Present:** Steve Doherty, Chairman; Shane Colton, Vice-Chair; Dan Vermillion; Willie Doll; Vic Workman.

**Fish, Wildlife & Parks Staff Present:** Jeff Hagener, Director, and FWP Staff.

**Guests:** July 17, 2008 Commission file folder contains names of those who signed in.

**Topics of Discussion:**

1. Call to Order - Pledge of Allegiance
2. Approval of Commission Meeting Minutes of June 12, 2008
3. Approval of Commission Conference Call Meeting Minutes of June 20, 2008
4. Approval of Commission Expenses through June, 2008
5. Potential Reschedule of November, 2008 Meeting
6. Governor's Executive Order to Promote Energy Conservation for Commission Meetings.
7. Westslope Cutthroat Conservation Project on the South Fork of the Flathead – Status Update
8. Riverside Inn FAS Acquisition near Absaroka– Final
9. Amelia Island Fishing Access Site near Hysham – Final
10. Alkali Fishing Access Site near Malta – Final
11. Charlie Lincoln Ranch Acquisition near Shelby- Status Update
12. 2008 Upland Game Bird Seasons – Final
13. HB 454 Hunting Access Agreements – Final
14. 2008 Early Season Migratory Bird Regulations – Tentative
15. Elk Plan Objectives Adjustment – Tentative
16. 2008 Elk Harvest Quotas and Ranges for HDs 204, 261, 270 - Tentative
17. 2008-2009 Game Damage Permit Authorizations - Tentative
18. Ekalaka Urban Deer Management Plan – Tentative
19. Emergency Pronghorn Antelope Quota Reductions in Regions 3, 4 and 5.
20. Cornwell Ranch Conservation Easement - Amendment.
21. Exotic Wildlife Classification for Importation / Possession - Tentative
22. Open Microphone – Public Opportunity to Address Additional FWP Issues

1. **Opening - Pledge of Allegiance.** Chairman Doherty called the meeting to order at 8:30 a.m. and led the Pledge of Allegiance.

2. **Approval of June 12, 2008 Commission Meeting Minutes.**

*Action: Colton moved and Workman seconded the motion to approve the June 12, 2008 meeting minutes. Vermillion asked that record reflect that when the Angling Restriction Rules were discussed at the June meeting, that he had asked and received from Chris Hunter confirmation that the Angling Restriction Rule IV (2)(d) did not come into effect until conditions set forth in Rule IV (1) of Subpart I of Rule IV are met. Motion carried.*

**3. Approval of June 20, 2008 Commission Conference Call Meeting Minutes.**

*Action: Colton moved and Workman seconded the motion to approve the June 20, 2008 meeting minutes. Motion carried.*

**4. Approval of the June, 2008 Commission Expense Report.**

*Action: Vermillion moved and Doll seconded the motion to approve the June expense report as presented. Motion carried.*

**5. Potential Reschedule of November, 2008 Meeting.** Commissioner Vermillion stated that he was recently made aware of a conflict with the November meeting date, so requested changing the date to Monday, November 10, 2008.

*Action: Vermillion moved and Workman seconded the motion to change the date of the November 13, 2008 meeting to Monday, November 10, 2008. Motion carried.*

**6. Governor's Executive Order to Promote Energy Conservation for Commission Meetings.**

Director Hagener explained that Governor Schweitzer sent out Executive Order 35-2008, *Executive Order Advancing the Use of Technology to Promote Energy Conservation for Montana Board, Council, and Commission Meetings*, to all state agencies for consideration and implementation. The Department and Commission needs to look at where conservation efforts can be employed. When the 2009 meeting schedule is drafted, perhaps fewer meetings can be scheduled, or maybe they can be held every other month with video-conferencing on the off-months, etc. Ideas are welcome.

**7. Westslope Cutthroat Conservation Project on the South Fork of the Flathead – Status Update.** Chris Hunter, FWP Fisheries Division Administrator, lead the status update discussion on the South Fork project. The goal of this project is to protect the native westslope cutthroat trout fishery in the South Fork Flathead drainage by minimizing the hybridization with non-native trout. The preferred alternative in the EIS calls for application of piscicide to remove non-native trout from up to 21 headwater lakes in the South Fork Flathead drainage and replace them with pure westslope cutthroat trout. This project entered the implementation phase in fall 2007 with successful rotenone treatment of Black and Blackfoot lakes. In 1999, several states signed an MOU to ensure conservation of westslope cutthroat trout. It took six years of planning and talking to the public before an approved plan was developed in 2005.

Matt Boyer, Region 1 Fisheries Technician, narrated a power point presentation on the project.

Workman asked if an adequate sampling had been taken on the 56-mile reservoir over the 3-year period. Boyer replied that it was, based on percentages.

Jim Vashro, FWP Region 1 Fisheries Manager, stated that surveys indicate that recreation fishing is an important component in the back-country experience, and needs to be re-established. FWP has treated 140 lakes, of which four are in the high country, similar to the South Fork. Most fish sizes have been replaced except the larger ones. He continued with further narration of the power point presentation.

Workman asked if eggs can be transplanted by waterfowl. Vashro said they would have to be adhesive eggs, and these eggs are not. Salmonids bury eggs and are not adhesive. Buckets are also a possibility.

Workman asked if Spotted Bear Lake had ever been poisoned. Vashro said it had not, unless it had been over 50 years ago. Workman asked if any restocking projects had been unsuccessful. Vashro replied that there were a few, but mostly bucket biology has been the problem.

Workman asked if the system will ever be 100 percent pure. Vashro replied no, but by replacing headwater sources with pure cutthroat, the non-native fish will be reduced to a non-detectable level over time. Workman asked if FWP will back up the studies that say the number of hybrid samples is adequate. Vashro said in sampling a mass of fish like has been done, there is a 99 percent chance that a non-native population will be detected. Yes, it is a good characterization of what is there. FWP will continue to survey the project area, and at this level of sampling should be able to detect any problems.

Jim Satterfield, FWP Region 1 Supervisor, said in 2006 FWP recognized that this is a large, unique, controversial project to take place over a ten-year period. There are ongoing outreach efforts to the public. In 2007, the Department committed to conduct annual meetings to inform the public of any reclamation plans, and to report on what the success has been. Twenty-five folks attended the public meeting in 2007, and forty attended in 2008, with more support expressed. FWP developed a web page dedicated to this project, and the Department also made the commitment to conduct a mid-project review after five or six years of reclamation which will provide several years of stocking data. Modifications to the project made at the mid-project review could range from doing nothing to instituting substantial changes. Adaptability is a key component since it is a long-term project.

Vermillion asked if there is any particular order in which the lakes were poisoned. Satterfield said the intention was to begin with the less challenging waters to gain experience before doing the more difficult waters. Four waters have been held back to see if swamping would work best on them rather than killing the fish out.

Workman asked if hybridization will continue during the ten year duration of this project. Satterfield said it would, but logistically it must be done in stages. If it is done in a staggered situation, the public still has a chance to fish.

Chairman Doherty asked for public comment.

Tony Anderson, Kalispell, has been a part of this project for several years. He serves on the Region 1 Citizens Advisory Council. He has heard many public comments, and generally they are opinions rather than data driven. He said Montana is about to lose the state fish, and fears that in thirty years these fish will no longer exist. Money is not being taken from another area, it is money specific to making this wrong right.

Brent Mitchell, Kalispell, Audubon and Region 1 CAC member, supports the project. Educated professionals are working on the project. His major concern is that we are seen by everyone as putting out a good faith effort to save westslope cutthroat. The law says we have to do something proactive in the management of the species. We could lose fishing in the South Fork. This is a viable effort.

Thad Grays, tackle shop owner, said this project is vital, and we need to save native fish. Doney Lake was treated in this same method and did not work out well. Two years ago two lakes were poisoned out near his place, and now there are 6-14 inch fish there. Mountain lakes won't produce big fish as fast as the valley fish because of the altitude. This project is to save westslope cutthroat – let FWP do it.

Mark Wilson, USFWS, is supportive of FWP's efforts to conserve pure westslope trout. They had sent a letter of support in May of 2001, and in 2004 they had concurred with Bonneville Power Administration's biological assessment that this project would not adversely impact federally listed threatened species, including bull trout, grizzly bear, the lynx and the gray wolf. The South Fork of the Flathead ecosystem comprises approximately one half of the remaining genetically pure westslope cutthroat trout in Montana. There are many isolated resident populations in small streams, but very few large sections of suitable habitat containing healthy migratory populations. The 2007 treatments of the lakes achieved immediate objectives. It will take two to three more years before biologists can provide valid judgments of how rapidly these ecosystems will respond and recover. Citizens in Montana should feel proud that there are healthy populations of the state fish, and should ensure that secure populations thrive in Montana.

Brian Lipscomb, Columbia Basin Authority, said this is a native population that is important regionally and worldwide. This is an opportunity to manage these species. They support the project.

Tom McDonald, Confederated Salish & Kootenai Tribes, supports and endorses the project. It is important to restore, maintain, and enhance westslope cutthroat populations both in Montana and on the reservation. Do not waste this valuable opportunity. In the wilderness setting, it is important to maintain them in perpetuity.

Germaine White, Confederated Salish & Kootenai Tribes, said their elders signed the Hellgate Treaty 100 years ago to preserve fish, and those expectation remains today. Fish are a native food source, and are important to their culture. In 2000, the co-management agreement was entered into, and it provides for native species preservation. FWP has a legal responsibility to honor the agreement, and a cultural responsibility as well. He urged the Commission to continue the project.

Bruce Measure, Northwest Power and Conservation Council, stated that this program is funded through the NPCC. The project emanates from the local level, and then is brought before the NPCC. They have received no negative comments. He recommends maintaining the project.

Bill Maslen, Bonneville Power Administration, supports this project. BPA markets power and mitigates projects. Hungry Horse dam is an important mitigation project. When this westslope project was proposed to BPA, they went through their own MEPA processes, and conducted the social/economic processes, and found that it meets the objectives of the mitigation, and hopefully the fish will be kept off the endangered species list.

Pat Van Eimeren, Flathead National Forest, is one hundred percent behind the project. It has been through an extensive public process, and he is confident the EIS covered all of the issues. The science has not changed. To protect the integrity of westslope cutthroat, either swamping or chemical treatments must be enacted, and it must be done now or there will be no westslope cutthroat. He presented a letter of support to the Commission.

Chris Shuster, Flathead Valley Trout unlimited, expressed support for the project and urged its continuation. It has gone through an extensive public process, and they fully support it. It is adaptive in nature.

Bruce Farling, Trout Unlimited, supports the project. TU does not take the removal project lightly. Scientific studies and public process has been good. The fishery staff does a superb job in responding to concerns. It's not affecting most waters over the ten-year period, and its not affecting a great amount of angling days. It is a good approach to treat them and then plant them right away. Nothing is one hundred percent.

Scott Rumsey said he spent a lot of time in the South Fork when he worked for FWP. He worked on the EIS. If this is dropped, it would be a departure from the Department's goals.

George White said this action is proactive to save native fish, and he hopes that is the direction FWP is going.

Jim Varone, Kalispell, is not in favor of project. He saw only a small amount, if any, of hybrid fish. Poison goes down stream – what happens to other lakes? What will happen to bull trout? There is too much uncertainty – it's a big chance to take. It is an awfully drastic measure. Mistakes have been made before. Then do we go after other species – where does it end? It's a large undertaking for such a small amount of fish that are hybrid. It takes a long time to grow the larger fish – they are there now. It will take twenty years to get fish as big as these are now. Motorized equipment – does not approve of exceptions to that. It is hard to attend FWP meetings during the day.

Francis Foss, Columbus Falls, has fished all these lakes and they are good fisheries. Has had an opportunity to catch large fish there. This is experimentation. He has no problem with the preservation of the fish. He urged using a cautious approach as he has seen serious mistakes made in the past. There is some probability that these waters will be destroyed.

Jenna Wiese, Kalispell, has been on many of the lakes. Rotenone scares her. It has been known to cause Parkinson's Disease. How much does it cost over ten years? How many times will be it have to be redone, and what will be done to keep hybrids from coming back? (The Department will provide a response to Ms. Wiese).

Gail Stroshim, Kalispell, is against Rotenone, it concerns her. She is in favor of the swamping process. It can take thirty days to detoxify, and even longer in cold lakes. Does FWP wait one month to restock as is recommended? It can kill ducks, birds, other fish, and other animals. Fish killed with rotenone cannot be consumed. Should not be used in irrigation waters. It is a pesticide and must be handled as such. Are the replacement fish healthy or are there viruses present? Is the same brood stock used that has been used for years?

FWP staff replied that the fish are indeed healthy, and there are no viruses. The brood stock is the same.

Carol Nelson, Bigfork, is against this project. She has seen no signs of public outreach – it is not getting out to the public. Project needs more exposure. People want organic food, but FWP wants to use poisons. Rotenone lasts a long time. She has concerns about the cost. Flathead Lake with miasis shrimp was a tragedy. Most outfitters are against this. Keep the wilderness the way it is. Will mechanized equipment be taken into the wilderness for this project? FWP should be held to same standard of not using mechanical equipment in the wilderness. Rotenone affects the body medically. Killing fish reduces availability of food for other animals. It's wrong.

Eric Ditto has been to these lakes. Fish were pure as far as he was concerned. If the poison kills the fish, will another animal be poisoned if it eats the fish that died from rotenone? This is a great fishing area. He is against the project. The Flathead Lake project went wrong. Poisoning will affect lower streams as it runs down.

Doug Long said the social economic study showed impacts. Maybe block off bodies of water or do an all-or-nothing. Modify the plan. There will be bucket biology.

Michael Allen, Columbia Falls, said swamping is a better procedure. Ethically, what gives a few people the right to destroy an ecology that has taken years to develop? Will the replanted fish do as well as what is there now? He does not want to see such a good fishery removed. He has taken kids fishing in these lakes, and they are not concerned about purity. He has not talked to anyone who is in favor of the project, except those involved in it.

Harold Nelson has lived in the area for thirty-five years. He has seen bald eagles fishing. Montana is the last best place. He does not trust FWP. He said this is not about a fish, it is about control. The Department is caught up in something they don't understand. Slow down – swamp, but don't poison. The USDA and Forest Service is a political action.

Joe Fagan is against the project.

Ed Smith has heard negative comments at the two large comment periods. How did this get underway – did the Commission approve it or did FWP just go ahead and do it? He is against Rotenone. He is against killing incidental species. To destroy ecology of the lakes is ridiculous.

Gary Collier said a friend has caught lots of fish in the lakes. He recommended the lakes be left alone. Check Spotted Bear Lake.

Vermillion asked FWP what the schedule is for poisoning the lakes.

Boyer said the sequence depends on a variety of factors. It is a flexible schedule, however the logistically challenging lakes will be treated last. This year the Lower Big Hawk will be treated, and FWP will finish up the lakes from last year. FWP budgets \$100,000 each year for the project. Also factored in is which lakes cause the biggest threat.

Vermillion asked if public fishing pressure is factored in. Boyer affirmed that it is.

Colton inquired as to the success of past swamping efforts.

Boyer said swamping began in the 1980s, but it was not a consistent effort. In certain situations it was successful. Additionally, the fish that were stocked were breeding with the fish already there.

Doll said studies have been going on for years, and he feels the threat of medical conditions caused by Rotenone is very low. As an example, several years ago a product that was used on heifers in feedlots for weight gain was found to potentially cause cancer, and has since been banned from feedlots, however one birth control pill has more of this same chemical than what eating 200 pounds of liver in one sitting has. This chemical cannot be used on livestock, but medical doctors can prescribe it.

Bob Snyder, FWP Hatchery Bureau Chief, assured everyone that the fish plants are healthy. There is a pre-release health examination of the fish before they are stocked. FWP does not stock diseased fish. There is presence of cold-water disease bacteria, which is a systemic bacterial disease. It is common in salmonic species. It is vertically transmitted from adults to the juveniles through eggs, and is endemic to wild fish. The disease is controlled by administering oxytetracycline so the fish do not become

diseased even though the bacteria is present. There is a difference between infection and presence of bacteria. The fish stocked do not exhibit any signs of the disease. The FDA has established a twenty-one day withdrawal period for oxytetracycline from fish. They must be held in the hatchery for twenty-one days after administration of the drug before they can be released. The existing brood stock is from the South Fork of the Flathead out of fourteen drainages. The same fish would be used for swamping as for replanting.

Doherty asked about the effect on eagles and osprey, etc. that eat the dead fish.

Don Skaar, FWP Fisheries Pollution Control Biologist, said the bioaccumulation is low. The EPA looked at sensitive species during the study for affects. Rotenone goes into the gut and breaks down. The EPA did not choose to look at humans during the study because the label prohibits consumption. Fish that are killed by Rotenone sink to the bottom of the lake or stream, or they are hauled away by staff. Rotenone breaks down after a few weeks.

Workman said he had been told at the Dillon Commission meeting that more studies would be conducted - he has since been informed by Region 1 that nothing further has been done. He is not one hundred percent against the project, but he is against any project that has detrimental effects on twenty-one high mountain lakes. Preserving a native species is important, but he said he is not willing to be part of a project that does not have a chance to succeed. If FWP was to poison all twenty-one lakes at once, the goal might be accomplished. But the goal is not accomplishable with the numbers presented today. If there is too much hybridization, the project has no way to be successful. His goal is to have the Commission suspend poisons until a future Commission agrees that the project can be a success, and that requires knowledge of how much hybridization there really is. To destroy these lakes is a travesty.

*Action: Workman moved to indefinitely postpone Rotenone treatments, or any other poisons, without future Commission approval, and include public comments. Motion failed due to lack of a second.*

**8. Riverside Inn FAS Acquisition near Absaroka– Final.** Chas VanGenderen, FWP Parks Division Assistant Administrator, explained that the proposed 3.7-acre Riverside Inn Fishing Access Site, located on the Stillwater River two miles north of Absaroka, would meet the public demand for a boat launch/takeout site. Development would include a boat launch, a vault toilet, signage, and a parking lot of 31 sites that would help to resolve safety issues and conflicts created by recreationists who park along the North Stillwater Road and access the river from the new bridge. Local residents expressed concerns over potential impacts of public use on the neighborhood, and river users and sporting organizations strongly supported the acquisition. FWP will make a concerted effort to address impacts on neighbors. The purchase price is \$460,000, of which the Department proposes to use Access Montana funds, FAS funds, \$25,000 from the Montana Fish & Wildlife Conservation Trust, and private donations from local kayaking interests.

Colton agreed that there is serious congestion on the county road since the bridge was redone – access is definitely needed. This site is close to a large population center. There has been broad support for the project.

*Action: Colton moved and Vermillion seconded the motion to authorize Fish, Wildlife & Parks to purchase the Riverside Inn Fishing Access Site on the Stillwater River at the cost of \$460,000, and to undertake site development, as provided for in the Environmental Assessment. Motion carried.*

**9. Amelia Island Fishing Access Site near Hysham – Final.** Chas VanGenderen, FWP Parks Division Assistant Administrator, stated that a local landowner wishes to donate 4.786-acres of land to FWP for use as a public fishing access site. The site is located near Hysham, and would provide much needed access to the Yellowstone River, because the closest fishing access sites are located seven miles upstream and twenty miles downstream. The adjacent Amelia Island Wildlife Management Area does not offer a suitable site for boat access to the river. There has been strong support for the project. Future developments include a boat ramp, a parking lot, vault latrine, fencing, and signing.

*Action: Colton moved and Vermillion seconded the motion to authorize Fish, Wildlife & Parks to accept the donated fee title to the proposed Amelia Island FAS for inclusion in the Department's Fishing Access Site Program.*

Chairman Doherty asked for public comment.

Matt Greason asked if a barrier will be erected to protect what is invested.

VanGenderen replied that he could not commit to the installation of barriers at this time. Another Environmental Assessment would need to be done to address further development.

*Action on Motion: Motion carried.*

**10. Alkali Fishing Access Site near Malta – Final.** Chas VanGenderen, FWP Parks Division Assistant Administrator, explained that the proposed Alkali Creek Fishing Access Site is located on the Milk River, approximately four miles southwest of Malta. There is not a lot of public access on the Milk River – in fact, this site has been used by anglers who park on MDT property, then cross over onto private property to fish the creek and river. The landowner has not prevented the public from entering this area, but this site has been faced with trespassing, littering and unsanitary practices. Future improvements include parking, a latrine, signs, and a trail to the riverbank.

Purchase of the 6.69-acre site involves two separate transactions. Richard Devries owns 1.77 acres, and the Montana Department of Transportation (MDT) owns 4.99 acres. Devries is asking \$1,500 for his parcel, and MDT is offering a no cost Recreation Use Permit from MDT to manage their adjacent acreage. The Recreation Use Permit is for a 10-year term, with renewal every 10 years.

*Action: Doll moved and Colton seconded the motion to authorize Fish, Wildlife & Parks to purchase the Devries property and accept management of the MDT property as provided in the Recreational Use Permit for development and management of a Fishing Access Site. Motion carried.*

**11. Charlie Lincoln Ranch Acquisition near Shelby - Status Update.** The 7,540-acre Lincoln Ranch is located eight miles southwest of Shelby, and seventy miles northwest of Great Falls, in Toole and Pondera Counties, and straddles fourteen miles of the Marias River. Director Hagener explained that Charlie Lincoln willed this property to the Helena Catholic Diocese, and granted FWP the first



right of refusal whereby the Department must meet the high bid to acquire the property should the Diocese decide not to keep it. The Catholic Diocese has decided not to keep the property, and a public bidding process culminated July 14.

The estate received five bids ranging from \$1 million to \$3.75 million dollars. Oral bids were opened and two bidders continued. The ultimate bid was \$4.75 million. The representatives of the estate had twenty-four hours to make a decision, and they rejected all bids. The Department can talk with them to make an outright purchase - \$4.75 million would be a bid FWP could meet. The Department is requesting Commission approval to discuss the purchase with the landowners.

*Action: Workman moved and Colton seconded the motion to approve purchase of the Lincoln Ranch in fee title as an exceptional representation of good wildlife habitat and recreational potential in north central Montana. Motion carried.*

**12. 2008 Upland Game Bird Seasons – Final.** Quentin Kujala, FWP Wildlife Division Management Bureau Chief, presented the proposals.

No changes proposed to previously adopted/2007 dates and limits (no change from Tentative adoption Option 1 for Sage Grouse: 62 day season from Sep 1 – Nov 1).

Doll said he would like to see a 30-day season. Of the letters from constituents that he received, eighteen were in favor of a shorter hunting season due to low populations of sage grouse. The blame for these lower populations included coalbed methane, oil and gas drilling, overgrazing, and sodbusting. Lek numbers of sage grouse in the C.M. Russell and Philips County are down 30% or more. There is no coalbed methane or drilling on the CMR, and no sodbusting or overgrazing, and yet the numbers are down, so there must be another cause. Maybe it is due to predators, or maybe it is due to West Nile virus, but the numbers are down. A robust population is necessary to get the numbers back up. Doll has heard ranchers say how the sage grouse are dear to them, and if even one sage grouse is killed on their land, they will close their ranch to all hunting. Ranchers in his area will not allow any sage grouse hunting. The Commission needs to look at the wishes of the ranchers. Last year he counted 72 males on his ranch, the year before it was 68, and this year he cannot locate a single one. He recommends the rest of the upland game bird regulations remain as proposed, but shorten the sage grouse season to thirty days for at least one year to give the birds a chance to recover.

*Action: Doll moved and Workman seconded the motion that the sage grouse season be limited to a one-month season from September 1 to October 1.*

Vermillion asked if the Department could localize the seasons and make them site specific to protect the birds. Some areas are robust and others are struggling. Kujala said the Commission has the authority to authorize that. It would be an annual discussion.

Hagener said the USFWS will make their ruling in December on whether a listing is warranted or not. Since the mid-1960s, there has been a significant decline in populations. But since 1985, things have largely stabilized. How much impact West Nile virus has had on Montana, and other states, has not been documented.

*Action on Motion: Motion failed. Two in favor – three opposed. (Workman, Vermillion and Colton opposed).*

*Action: Colton moved and Workman seconded the motion to adopt as Final the 2008 Sage Grouse regulations as proposed (no change from 2007). Motion carried.*

*Action: Colton moved and Workman seconded the motion to approve the remainder of upland game bird regulations as recommended by the Department. Motion carried.*

**13. HB 454 Hunting Access Agreements – Final.** Under the provisions of 87-2-513 MCA, FWP received the authority to issue either-sex or antlerless elk permits to landowners for management purposes. The landowner must offer free public elk hunting, meet the various conditions of the statute, and enter a contractual public elk hunting access agreement with FWP.

Quentin Kujala, FWP Wildlife Division Management Bureau Chief, presented the proposal. No changes to the tentatives. The agreement with the Swanz ranch started in 2002 and has been reapplied annually with positive post-hunt evaluations.

*Action: Doll moved and Colton seconded the motion to adopt the Final Swanz Hunting Access Agreement for the 2008 general hunting season. Motion carried.*

**14. 2008 Early Season Migratory Bird Regulations – Tentative.** Quentin Kujala, FWP Wildlife Division Management Bureau Chief, presented the proposal.

No changes proposed to 2007 dates or limits except:

Propose to expand special permit season dates for Rocky Mountain Population of Sandhill Cranes to September 6 – September 21.

Propose to move later the season dates for Mid-continent Sandhill Cranes to September 27 – November 23.

Propose to allocate each successful applicant two crane permits for Dillon/Twin Bridges/Cardwell and Wheatland/Meagher/portion of Sweetgrass Counties.

*Action: Colton moved and Doll seconded the motion to adopt as Tentative the 2008 Early Season Migratory Bird Seasons as proposed by the Department. Motion carried.*

**15. Elk Plan Objectives Adjustment – Tentative.** Quentin Kujala, FWP Wildlife Division Management Bureau Chief, presented the proposal. The actual objectives are fixed but there is an annual opportunity to bring forward adjustments. Adjustments are as follows.

#### Region 2

HD 210 – increase objective from 725 to 1000

HD 216 – increase objective from 325 to 450

Rock Creek EMU – increase objective from 2370 to 2770

HD 212 – increase objective from 850 to 1500

HD 213 – increase objective from 650 to 750

Flint Creek EMU – increase objective from 1500 to 2250

HD 214 – increase objective from 200 to 450

Sapphire EMU – increase objective from 3800 to 4050

HD 215 – increase objective from 1000 to 1200

Deer Lodge EMU – increase objective from 2100 to 2300

HD 290/298 – establish objective at 800 (new hunting district 298)

HD 292 – decrease objective from 1100 to 900

Garnet EMU – increase objective from 2200 to 2800

HD 293 – decrease objective from 750 to 500

Granite Butte EMU – decrease objective from 2150 to 1900

HD 270 – establish a sub-objective of 2600 for publicly accessible elk; maintain HD objective of 3000; Sapphire EMU objective is not influenced by this specific change

*Action: Colton moved and Workman seconded the motion to adopt as Tentative the Elk Plan objective changes as presented by FWP. Motion carried.*

**16. 2008 Elk Harvest Quotas and Ranges for HDs 204, 261, 270 – Tentative.** Quentin Kujala, FWP Wildlife Division Management Bureau Chief, presented the proposal. Proposed changes are:

Reduce the 2008 quota through the Darby Check Station that triggers closure of the antlerless portion of the brow-tined bull/antlerless season in HDs 204, 261 and a portion of 270 from 200 to 100 cow elk.

Reduce the 2008 total quota (season-long) through the Darby Check Station, which triggers closure of the antlerless portion of the brow-tined bull/antlerless season in the southern portion of HD 270, from 300 to 200 cow elk.

In HDs 204, 261, and a portion of 270, establish a quota range for 2008-2009 of 50 to 300 cow elk through the Darby Check Station.

In HD 270, establish a quota range for 2008-2009 of 100 to 400 elk through the Darby Check Station, which will close the southern portion of HD 270.

*Action: Workman moved and Doll seconded the motion to adopt as Tentative the 2008 elk harvest quota and range for HDs 204, 261 and 270 as proposed by the department. Motion carried.*

**17. 2008-2009 Elk Game Damage Permit Authorizations – Tentative.** Quentin Kujala, FWP Wildlife Division Management Bureau Chief, presented the proposal.

Proposed changes are to adjust Region 3 elk game damage and management season permit authorization from 1,000 to 2,000.

Vermillion said crop damage triggers game damage hunts -- he then asked what the triggers are now.

Kujala replied that game damage is a trigger with the current quota set with primarily game damage in mind. What is unclear is what additional harvest interests will come through disease issues. The additional 1,000 may not be used.

*Action: Vermillion moved and Workman seconded the motion to adopt as Tentative the 2008 and 2009 Game Damage Permit Authorization for elk in Region 3 as proposed by the Department.*

Matt Briggs of the audience asked how fair it is to the public to hold a damage season a week before general season.

Kujala replied that the names come from the game damage hunt roster for game damage opportunities. Game damage includes management seasons with different priorities than the general season. It responds to damage circumstances where timing is critical.

*Action on Motion: Motion carried.*

**18. Ekalaka Urban Deer Management Plan – Tentative.** Quentin Kujala, FWP Wildlife Division Management Bureau Chief, presented the proposal.

The Town of Ekalaka has requested help from FWP to help them produce an urban deer plan to control resident deer in their town. (Carter County officials and the Sheriff's office are also involved). Their proposal is to create an archery hunt within the city limits. Harvest quotas and deer-density objectives have not been discussed. Individual deer that pose human health and safety threats will be addressed as they occur. Efforts to address deer concentrations in areas adjacent to, but outside of the town, are also being considered. This plan is fundamentally different than Helena Urban Deer Plan. There are no objectives.

*Action: Colton moved and Vermillion seconded the motion to adopt as Tentative the draft Ekalaka urban deer plan and instruct department staff to continue their presence with town and county officials in any further refinements communicated here or through additional public process. Motion carried.*

**19. Emergency Pronghorn Antelope Quota Reductions in Regions 3, 4 and 5.** Quentin Kujala, FWP Wildlife Division Management Bureau Chief, presented the proposal.

Since adoption of the tentative quotas in February, surveys have indicated that reductions in quotas are necessary. The 300 and 490 districts are showing lesser populations and recruitment, and the 513 and 530 districts are down due to the bluetongue issue. This is an emergency request to approve the lower quotas, and is also a request to annually address these districts.

*Action: Colton moved and Workman seconded the motion to adopt the antelope quotas as recommended by the Department. Motion carried.*

**20. Cornwell Ranch Conservation Easement - Amendment.** Director Hagener explained that the last Commission meeting generated substantial discussion on the Cornwell easement. The easement was approved by a vote of four to one, and was then placed on the Land Board agenda for approval at their meeting the following week. The easement was withdrawn before the Land Board heard it.

Doherty said with the Land Board taking no action, this project is left in a "between" status. The Commission must take some action to get it back officially to address the issues that DNRC brought up and then decide to send it back to the Land Board or not.

*Action: Doll moved to amend the previous decision on the Cornwell Conservation Easement and give the Commission more time to reconsider it in light of the DNRC, Land Board, and other concerned persons to take it up at a future Commission meeting. Workman seconded the motion.*

David Deitrich, the attorney representing the Cornwell family, stated that he would like to address the motion in the context of the Cornwell family's compliance with all of the requirements imposed by DNRC. He is holding four applications to purchase the state lands that Director Sexton requested the Cornwells purchase conditional upon the conservation easement going forward, and they have also signed a special state land's lease that is modified to protect a large block of DNRC real estate to the east of the Cornwell property. Those are two of the concerns addressed in Sexton's memo that came in to his office on July 17. His understanding is that personnel from DNRC and FWP have already met on both topics and have actually addressed all of the outstanding issues as of June 20. There is a memo between DNRC and FWP that confirms this. Purchasing state lands takes time, modifying state leases takes time, and the Cornwells are under a written commitment to do so for this transaction to take place. They have complied with everything Director Sexton has requested. The broader issue is why this is under reconsideration. His recollection was that Sexton was in support of the project when she spoke at the Commission meeting. Another issue was whether or not the Cornwells would increase the amount of hunter and angler days, which they have negotiated. The Cornwells have gone through a years worth of negotiations and have spent in excess of \$50,000-\$70,000 on appraisal fees and other fees for this project. They have complied with all requirements imposed by FWP, they have a yellow book review, and they have a one-hundred page appraisal from Wheeler's office establishing that the 45% takedown is in fact consistent with other conservation easements in eastern Montana. If this project goes under in favor of another conservation easement or a fee interest acquisition, there will be many problems. Conservation easements do not remove the property from the local and county tax roles. A conservation easement like the Cornwell easement has a built-in manager - the family who operates this ranch. A fee interest acquisition requires the state to affirmatively manage the property and take on those duties of management. A conservation easement like this does provide significant public access and perpetual restrictions on use and public access. Conservation easements are cheaper than fee interest acquisitions. The Cornwells are willing to purchase the DNRC inholdings, which is a half-million dollar reduction. There is no reason to delay placing this project in front of the Land Board. Fee interest acquisitions should not be the only way to gain public access.

Chairman Doherty asked for public comment.

Janet Ellis, Montana Audubon, supports this easement as an important area for Audubon interests, and she stated that the Nature Conservancy has also identified it as the best short grass prairie in the state. She said that in talking to Land Board staff, the Land Board feels that since the Commission has taken action on this, they must also act on it.

Lee Cornwell stated that they patterned their easement agreement on the Paige Whitham easement. They want to pass their ranch on to their heirs while it is still used as it is now. They have always allowed public hunting access. Land values have been driven up due to people purchasing and selling land and sheltering the income. They have addressed all concerns expressed by Mary Sexton, and have had the land appraised.

Paul Ringling, Montana Land Alliance, stated that his organization holds conservation easements on 694 Montana properties totaling 800,000 acres. He said some people are raising questions about the valuation of the Cornwell Ranch appraisal that was conducted by Clark Wheeler. Ringling said he has reviewed 694 conservation easement appraisals, and the values in the Cornwell appraisal are

conservative. Montana Land Alliance has 110 families in Montana interested in entering into voluntary private land conservation easements with them. These are donated conservation easements, not easements that are purchased by the Department or by other entities. He cautioned the Commission that by questioning this appraisal conducted by one of the premier ranch appraisers in Montana who is familiar with IRS procedures, the Commission is providing a basis for the IRS to question the valuation of all donated conservation easements across Montana appraised by Wheeler. Over the last fifteen years there has been an increase in land prices as out-of-state recreational buyers come in and purchase the land. Recreational land prices in Montana have risen 20 percent since the first of January. Most of that increase is in eastern Montana, basically east of a line running between Great Falls and Hardin. In 2009, a 3.5 million dollar exclusion from federal estate taxes on a 15,000-30,000-acre ranch will create estate problems.

Another concern he has deals with donated conservation easements from private landowners who donate those easements where there is state land adjacent to, or within, that ranch. Does this precedent now mean that you cannot donate a conservation easement to a non-profit organization unless you go in and buy, or compensate for, the supposed diminution of value or management problems on DNRC land? As a rule of thumb, if you place a conservation easement on a ranch next to a ranch that is not under easement, you have multiplied the value of that land by at least a factor of 5. Now DNRC is saying that if a landowner donates the development rights, the landowner has increased the value of the state land over and above that, and before he can continue with the process, he will have to compensate DNRC. There is a fairness argument that this doesn't seem quite right.

Ken McDonald, FWP Wildlife Administrator, said DNRC brought up six issues in the Environmental Assessment that were addressed in the Decision Notice. They had issues with the proposed grazing plan (addressed by FWP), they had concerns that easement will affect their ability to manage state lands (addressed by FWP), they feel it impacts ability to sell state land (the conservation easement only addresses private deeded land, the state sections are bordered by BLM land), they suggest their ability to develop energy production facilities will be diminished by the easement (the easement would have no impact on DNRC's energy development), and they suggest the easement would affect their ability to develop wind farms on DNRC lands (the Cornwell easement includes 640 acres with no restrictions on wind farm developments).

Paul Sihler, FWP Field Services Administrator, said a meeting was held with the Land Board staff yesterday on the Stillwater project, and at that meeting there was a question why the Cornwell easement was not on their agenda. Immediately prior to the Land Board meeting, he was called into the hall and was told that the Governor and Mary Sexton were withdrawing the item from the Land Board meeting with concerns of valuation and prices and issues discussed today.

Janet Ellis, said she participates in monthly conference calls with the Land Board, and last Tuesday the Land Board staff was concerned that the easement was not back on the agenda. They wanted to find out why it was not. They indicated that since the FWP Commission had acted on it, the Land Board must also act on it. They were going to ask DNRC why it was removed from the agenda by the Governor's Office and by Mary Sexton of DNRC. Nobody knows why. Doherty asked for clarification on the sales of state trust land parcel for sale.

Dietrich said the process is strictly regulatory. It goes through the appraisal process to determine the value of the land, and then it is advertised for sale. The Cornwells are willing to buy these state lands

dependant on this easement going forward. The restrictions on real estate are explained in his letter to Governor Schweitzer. It is problematic to link the easement project to purchase projects, but they are willing to go forward. The problem he has had is that he has had no dialogue with DNRC counsel.

Workman stated that the Cornwells have participated in good faith, and have done what they have been asked to do. He questioned why this is even being considered again.

Colton concurred, saying the issues have been worked out.

Doherty stated that the material provided by Mr. Deitrich indicates that the Cornwells have addressed the concerns expressed by Mary Sexton, but Mary Sexton's memo says the issues have not been addressed. He agreed that the Cornwells have acted in good faith. He would like to receive a sign-off memo from DNRC by the August 5 Commission meeting that says that these things have indeed been addressed.

Hagener asked if in fact the Commission takes action to postpone it, what does the Department need to do to bring it back again because the Cornwells have acted in good faith. Maybe Mr. Deitrich's letter has not been received by the Governor's Office and DNRC yet since it was only mailed July 16.

Deitrich stated that in addition to the letter, he had spoken with Mike Volesky at the Governor's Office, however those communications did not relate to DNRC. The question he posed to Volesky was what could be done to get the Governor's support to get this back on the Land Board agenda. The Cornwells were willing to sign the purchase application immediately following the last Commission meeting. They are willing to go forward with the application process on the purchase of the land and sign the state special lease agreement. Anything that is necessary to address DNRC's concerns. He suggested the Commission approve this project subject to the Cornwells' agreement to purchase the four sections of DNRC inholdings, and resolution of the concerns in Mary Sexton's memo.

Deitrich said that sometimes there are enhancements to DNRC properties as a result of conservation easements. This easement is not on DNRC property - it is contiguous to it. Some of the grazing management plan encompasses the DNRC property, but that is a separate transaction. The Cornwells need to know if they get Land Board approval. Keeping it in limbo is of no value. The process has been initiated, and it has been lengthy. He asked if they have to wait a year until the full acquisition process is completed through DNRC. DNRC has never communicated that, and that is not fair - the Cornwells have shown good faith.

Colton asked about the negotiations that took place.

Deitrich said there really were no negotiations. They used one of the finest appraisers in Montana who valued the land at a 45% reduction for public access lands, and that was the number agreed upon. The negotiations were largely between himself and Hugh Zackheim, and when Zackheim asked if a lesser figure than the appraised value would be accepted, Deitrich said he replied that they felt the Wheeler appraisal was valid, and the price would remain five million fifty based on comparable sales data. He contacted Governor Schweitzer's office last week to inform them that if there is a number less than this that the state of Montana wants the Cornwells to receive, they should tell him what that number is.

The Governor's Office left him a voice mail message saying they do not like the project from the standpoint that it is not a fee acquisition project.

Workman questioned if the Commission decided not to reconsider, would that put the impetus on the Land Board to figure out Sexton's concerns. The Commission has already approved it, so why is the Commission addressing it again?

Doherty said "my thought is to bring it back, tie it up, so all the issues are addressed, concerns can be checked off and we can go 'that's been dealt with, that's been dealt with, that's been dealt with, that's been dealt with, that's been dealt with', from the perspective of hearing from DNRC when these things have been dealt with. At that point, make an up or down decision about any dangling things that are left, and send it back to the Land Board and it's back in the Land Board's lap. If we don't, we don't."

*Action on motion: Motion carried. Four in favor – one opposed. Workman opposed.*

Colton asked if the DNRC concerns will be hammered out. Doherty said yes, and that he wanted another motion made.

*Action: Doherty moved to direct FWP staff to any of the issues raised in Mary Sexton's letter, any issues that have been raised in discussion between DNRC and FWP, any issues relating to this transaction from the comment that Ken went through, that we list them and we check off that they are dealt with, and the accompanying document is attached, and it must happen by August 5. Understanding that the nomination to purchase leased land is a whole other issue. (Dave Dietrich said his understanding of the process is that it takes eleven months from receipt of that application - the land banking regulation. There are new regulations that came out consequent to the last meeting and so I think you'd have to commit to go forward and it might not even be possible to do it. The original land banking deal was it had to be totally surrounded by deeded land where the impact is whatever you get on yours – we agreed to do it if that was the desire of the Director of DNRC) Continuation of Motion: And, Dave, you'd be willing to enter into an agreement conditional on this going forward and working through the process. (Lee Cornwell said it's a moot point if the easement doesn't go through and doesn't have any effect on the state land. But we also will consider the Department agreement to purchase subject to those land banking regulations.) Continuation of Motion: And having that down on paper, its in black and white and says we signed and this is what we are willing to do, and at that point it's a check-off, and in my mind there are no loose ends. I think that in my mind there be no loose ends. That's my goal, that there are no loose ends, that there is no questions of the Land Board so we can survive on its own and if in those situations people get to vote yes, no, or whatever depending on what they had for breakfast sometimes. Colton seconded the motion. Motion carried.*

**21. Exotic Wildlife Classification for Importation / Possession – Tentative.** Eileen Ryce, Aquatic Nuisance Species Coordinator, stated that exotic wildlife must be classified as non-controlled, controlled, or prohibited to be legally imported into Montana. A review committee, made up of representatives from FWP, Montana Department of Livestock, Montana Department of Agriculture, Montana Department of Public Health and Human Services, the exotic pet trade, and a citizen with an interest in fish and wildlife, evaluates petitions for classifications, then makes recommendations to the FWP Commission for classification.

The Classification Review Committee recommends that the FWP Commission adopt rules to allow for the following classification of exotic wildlife:



**Controlled**--The following exotic wildlife may be possessed only with a Controlled Species Permit issued by FWP: **Cranes:** black-crowned crane, black-necked crane, blue crane broilga, demoiselle crane, common crane, grey crowned crane, hooded crane, red-crowned crane, sarus crane, Siberian crane, wattled crane, white-naped crane. **Rails:** white-breasted waterhen, giant wood rail, buff-banded rail. **Falcon:** taita falcon

**Prohibited**--The importation, transportation or possession of the following species of live wildlife or hybrids thereof, including viable embryos or gametes, is prohibited: Small spotted genet.

The Classification Review Committee also recommends revisions to the rule to provide for "sanctioned" rescue facilities to temporarily house prohibited species until the animals are relocated.

*Action: Vermillion moved and Doll seconded the motion the commission tentatively approve the classification of exotic species as recommended by the classification review committee and the rule revision to provide for "sanctioned" rescue facilities to house prohibited species. Motion carried.*

## **22. Open Microphone – Public Opportunity to Address Additional FWP Issues.**

Don Bothwell, Montana Furbearer Conservation Alliance, commented that the average person cannot judge yardage beyond 200-yards. He asked how measurements will be enforced on the 1,000 setbacks. His group is concerned about excluding people from recreating if three areas are excluded from trapping. He asked FWP to stand behind them in legislation requiring mandatory trapper education. Montana should be proud that it is the only state that allows trapping wolverines.

Bill Boehm, Montana Trappers Association, said the tougher the regulations, the tougher it is to enforce them. Mandatory trap checks are hard to enforce – they create more problems.

Tom Ray, Plum Creek Timber, read from a letter. They are pleased to allow public access, and they have block management in place as well.

Pat Briggs, said to look at the Canyon Ferry walleye limit, and the carp need removed. More angler opportunity is needed. Give all fish species the same consideration.

Joe Fagan, said over 1,000 bison were killed last year, but there were not that many tags issued. He asked if FWP wants to keep lake trout or not. Remove the slot limit. He said FWP should sponsor fishing derbies. He asked about the outcome of the grizzly bear study. He asked if the wolf hunt will happen.

Jerry Malson, Sanders County Flycasters, said they concerned with Thompson River, and would like some emergency rules enacted to protect the brown trout. Jim Vashro replied that the region has submitted tentative regulations for the August 5 meeting.

*Action: Colton moved and Workman seconded the motion to adjourn the meeting. Motion carried.*

Meeting adjourned at 3:45 p.m.